IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

Bail Appl..No. 3909 of 2007()

CRIME NO.89/95 OF MANGALAPURAM POLICE STATION
THIRUVANANTHAPURAM

PETITIONER/1ST ACCUSED

ANSARI, S/O. ABDUL VAHAB,
THOPPIL VEEDU, VARIKKUMUKKU, IDAVILAKOM MURI,
VAILOOR VILLAGE, TRIVANDRUM DISTRICT.

BY ADV. SRI.M.DINESH

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 29/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 3909 of 2007

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Dated this the 29th day of June, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under Section 395 I.P.C. Investigation is complete. Final report has already been filed. The petitioner, it is submitted, was enlarged on bail at the stage of investigation. After the case was committed, the petitioner could not attend the court as he had gone to Mumbai in connection with his employment. He now faces a warrant of arrest issued by the learned Asst. Sessions Judge chasing him. Directions under Section 438 Cr.P.C. may in these circumstances be issued to save the petitioner from the undeserved trauma of arrest and incarceration, it is prayed.

2. It is trite after the decision in **Bharat Chaudhary** v. **State of Bihar** (IR 2003 SC 4662) that powers under Section 438 Cr.P.C. can be invoked even in favour of a petitioner, who apprehends arrest in the pending case on the strength of a non-bailable warrant issued by the court. Even that is not by itself sufficient to justify the invocation of the jurisdiction under Section 438 Cr.P.C. I am unable to find any compelling reasons which would justify invocation of the jurisdiction under Section 438 Cr.P.C.

3. It is certainly for the petitioner to appear before the learned Asst. Sessions Judge and explain to the learned Asst. Sessions Judge the circumstances under which he could not earlier appear before the learned Judge. I have no reason to assume that the learned Judge would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Asst. Sessions Judge and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Judge must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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